



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

Home Page: <http://www.azmdboard.org>

Telephone (480) 551-2700 • Fax (480) 551-2704 • In-State Toll Free (877) 255-2212

FINAL MINUTES FOR SPECIAL TELECONFERENCE MEETING

Held at 12:00 Noon on April 2, 2004

9545 E. Doubletree Ranch Road • Scottsdale, Arizona

Board Members

Edward J. Schwager, M.D., Chair
Sharon B. Megdal, Ph.D., Vice Chair
Robert P. Goldfarb, M.D., Secretary
Patrick N. Connell, M.D.
Ronnie R. Cox, Ph.D.
Ingrid E. Haas, M.D.
Tim B. Hunter, M.D.
Becky Jordan
Ram R. Krishna, M.D.
Douglas D. Lee, M.D.
William R. Martin III, M.D.
Dona Pardo, Ph.D., R.N.

Board Counsel

Christine Cassetta, Assistant Attorney General

Staff

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director
Amanda J. Diehl, M.P.A., CPM, Assistant Director / Licensing & Operations
Barbara Kane, Assistant Director / Investigations & Quality Assurance
Beatriz Garcia Stamps, M.D., M.B.A., Board Medical Director
Gary Oglesby, Chief Information Officer
Lisa McGrane, Legal and Communications Coordinator
Sandra Waitt, Senior Information Officer
Tina Wilcox, Legislative Liaison

CALL TO ORDER

Edward J. Schwager, M.D., Chair, called the meeting to order at 12:04 p.m.

ROLL CALL

The following Board members were present: Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board members phoned in late to the meeting: Ram R. Krishna, M.D. The following Board members were absent: Patrick N. Connell, M.D., Ronnie R. Cox, Ph.D. and Ingrid E. Haas, M.D.

CALL TO THE PUBLIC

No one was present for Call to the Public.

Pete Wertheim, Policy Advisor to the Majority Party and Elizabeth Baskett, House Health Analyst were present telephonically for the meeting, but did not speak at the Call to the Public.

Proposed Amendment to Pending Medical Board Legislation re: A.R.S. § 32-1405

Instructions to Executive Director re: Proposed Amendment

Barry A. Cassidy, Ph.D., P.A.-C presented an overview of the proposed amendment to the Board's pending legislation. The proposed amendment to the existing statutory language would require all medical malpractice cases to be referred to the Board for adjudication; thus removing the Executive Director's current delegated authority to review and dismiss those cases. Sandra Waitt, Senior Information Officer, informed the Board that a previous study revealed that 36% percent of complaints received by the Board involved medical malpractice; however, this figure was from a study done at a point in time, and was based on the total number of open cases, not complaints received. Ms. Waitt conducted an analysis of the 1,420 complaints received during the current fiscal year and reported that of those received, about 14% represented medical malpractice cases. Of the 732 cases dismissed by the Executive Director this fiscal year 212 cases or 29% involved medical malpractice. If the function of the Executive Director was shifted to the Board, the Board would review about 300 cases a year or 50 cases per meeting. Dr. Cassidy stated that not only would it be a significant amount of work for the Board, but also that the majority of medical malpractice cases dismissed involve settlements at low rates. He added that typically, cases that result in judgments for large amounts of money are forwarded to the Board with recommendations for discipline.

Edward J. Schwager, M.D. stated that the question currently before the Board was whether the Board should advise staff of a Board position on the proposed amendment. He added that the Board's Omnibus bill includes the Board's proposed Physician Health Program and Office-based Surgery language.

Ms. Wilcox informed the Board that the proposed amendment has not yet been placed on the bill. The Board's bill will be heard in the Senate Health Committee on April 8, 2004 and an amendment could be offered at that time. Dr. Cassidy added that if Board was in favor of the proposed amendment that it would put the bill sponsors in a position where they would have to withdraw their support.

Tim B. Hunter, M.D. stated that the proposed amendment would ill serve the public and would send the Board back in time. He stated that the Executive Director along with the Staff Investigational Review Committee reviews these cases well and he is not concerned that cases are slipping through the system. Dr. Hunter added that he does not support the bill and would favor withdrawing the bill if the amendment were to be added. William R. Martin, III, M.D. echoed Dr. Hunter's comments and stated that the amendment would not serve the public well. Sharon B. Megdal, Ph.D. stated that she has concerns with the construction of the amendment. Additionally, since the amendment has come close on the heels of the audit, she does not oppose the concept of amendment, but would like to have time to work out a compromise regarding the language with legislative staff. Dr. Schwager stated that his concern was that the Legislators would continue to make this an issue even though the audit report on a whole was a positive document. Additionally, the proposed amendment would increase the Board's workload and dilute the Board's ability to deal with the serious cases that have a significant impact on public health. Dr. Schwager then addressed the issue of relationship between malpractice settlement and unprofessional conduct. Often, cases are settled as nuisance cases or as a business decision without any admission of guilt. Cases where a finding is made and a verdict is issued may be different and he would support bringing those cases before the Board.

Ms. Cassetta informed the Board that she has reviewed the proposed language and also discussed this issue with Assistant Attorney General Dean Brekke and they both have some of the same concerns as Dr. Schwager. Ms. Cassetta recommended that the reference to settlements be removed from the proposed language or alternatively, that the agency could treat reports of medical malpractice as cases initiated by the Board and treat the party that made the report as the complainant. That way an automatic appeal process would be built in. This may address the Legislator's concerns because they seem most troubled by the being no appeal from ED dismissals of malpractice complaints. Dr. Cassidy suggested that many of the reporting parties, such as the plaintiff's attorney or the National Practitioner Data Bank, do not want to be contacted.

Robert P. Goldfarb, M.D. stated that he had concerns with the suggestion that only cases that went to trial would be looked at by the Board. He stated that while he understands the position of the Legislature and their concerns to protect the public, that malpractice settlement is often the result of a bad outcome by a very good doctor and not malpractice. He added that settlements are often the result of a business decision to avoid costly court expenses and avoid a judgment from a sympathetic jury. However, bifurcation of the process may force physicians to settle cases rather than going to court, in order to avoid having the Board review it. Dr. Schwager clarified that Board staff investigates all cases, regardless of settlement or judgment. The amendment would only eliminate the Executive Director's authority to dismiss those cases resulting in judgment. Dr. Goldfarb stated that there would still be unintended consequences because there would be additional step in the process if the Board looked at the cases, which could result in the physician having to appear before the Board.

Douglas D. Lee, M.D. asked if the Executive Director is being perceived as making individual decisions rather than making decisions on the recommendations of staff. Wilcox stated that the Legislative concern is that medical malpractice cases are not subject to appeal because there is no complainant. Douglas D. Lee, M.D. asked if the patient was allowed to make a separate complaint to the Board. Dr. Cassidy stated that the complainant in the medical malpractice case could also file a separate complaint with the Board, unless as part of the settlement agreement, the complainant waives his or her right to further recourse. Dr. Lee stated that he was still concerned that the Legislature believed that the Executive Director and his staff could not make a decision about the merit of a case.

Ms. Cassetta offered compromise in which the Board would randomly audit Executive Director dismissals to satisfy legislative concerns. Dr. Cassidy stated that it was problematic to force a solution to this issue in a limited timeframe, rather than do what was right.

Becky Jordan asked about the amendment requiring staff to provide a report of dismissals to the Board and whether it applied to all dismissals or just those involving malpractice. Ms. Cassetta stated that the language in the proposed amendment is not clear, but that she would probably take the position that the language applied to all dismissals. Ms. Jordan then asked how aware the committee chairs and the bill sponsors were of the Board's actual process for dismissing cases. Dr. Cassidy stated that he tried to meet with Senator Allen last week, but due to time constraints, he will meet with her next week. Dr. Cassidy stated that he believes that they may not completely understand the process and that he did not think the audit staff went into much depth with the committee chairs about the Board's process when discussing the audit results.

Dr. Megdal stated that there are a number of issues and that based on what she has read in the newspapers the concern with the Executive Director dismissals is that the public does not know of these dismissals unless they view the Executive Director's Report. Dr. Megdal recommended posting them on an agenda or in a similar way.

Ms. Jordan asked if the Legislators understand that the public can appeal dismissals. Ms. Wilcox informed the Board that every effort has been made, both in this legislative session and last session, to inform the Legislature that dismissals can be appealed. Ms. Jordan stated that this is a solution looking for a problem.

Dr. Schwager stated that his sense is that, given the overall issues involved and the timeframe, the Board is not in support of the proposed amendment as it was presented. He questioned whether the Board would support withdrawing the bill if no compromises could be made. Dr. Megdal asked that if the Board's bill were to be withdrawn, if there would be another mechanism the Legislature could use to carry the amendment forward. Ms. Wilcox informed the Board that the proposed amendment could not be attached to any other bill currently at the Legislature because it was only germane to the Board's Omnibus bill.

Ms. Cassetta offered a suggestion to instruct staff to ask Legislative staff to postpone the proposed amendment to the next Legislative session, giving the Board more time to sufficiently address the issue with proper analysis and thought.

MOTION: Robert P. Goldfarb, M.D. stated that in light of the complex issues involved, the possible unintended consequences, and the Board's intention to address legislative concerns, that he would move to ask the Legislature to postpone any refinements to the Board's bill until the next legislative session and give the Board more time to look at the various possibilities.

SECOND: Sharon B. Megdal, Ph.D.

Dr. Megdal reiterated that the Board intends to make a good faith effort to cooperate with the Legislature and wants the Board's action today to be seen as doing that.

ROLL CALL VOTE was taken and the following members voted in favor of the motion: Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D.

VOTE: 8-0 Motion Carried.

Ms. Wilcox asked that if she is unsuccessful with the Board's request and that if there were no other opportunities to eliminate the proposed language from the bill if she should withdraw the bill. She further clarified that the bill's sponsors would be amenable to this request.

MOTION: Tim B. Hunter, M.D. moved to withdraw the Board's bill if staff was unsuccessful at eliminating the proposed amendment.

SECOND: William R. Martin, III, M.D.

ROLL CALL VOTE was taken and the following members voted in favor of the motion: Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., William R. Martin, III, M.D., and Edward J. Schwager, M.D. The following members recused: Robert P. Goldfarb, M.D., Sharon B. Megdal, Ph.D. and Dona Pardo, Ph.D., R.N.

VOTE: 5-0-3

Ram R. Krishna, M.D. joined the meeting at 12:46 p.m.

Ms. Cassetta determined that a majority of the quorum voted in the affirmative and therefore the motion carried.

Ms. Wilcox and Ms. Cassetta clarified that alternative language to the bill would not be supported.

The meeting adjourned at 12:49 p.m.

[seal]

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director